



Federal Communications Commission
Washington, D.C. 20554

July 18, 2012

Case Identifier: CGB-CC-1228

Delaware Standardbred Owners Association
Attn: Heather Moffett
830 Walker Square, Suite 11-2
Dover, DE 19904

Re: *Post Time*

Dear Ms. Moffett,

This is to advise you that the Consumer and Governmental Affairs Bureau (CGB) of the Federal Communications Commission ("FCC") has reviewed the petition for exemption from the closed captioning rules you filed on behalf of Delaware Standardbred Owners Association. Your petition states that Delaware Standardbred Owners Association is a non-profit organization. The FCC's Rules do not provide an across-the-board exemption from captioning for such organizations. CGB has found that the petition provides some, but not all, of the information needed for us to make a determination as to whether or not the FCC closed captioning requirements would be economically burdensome for you.

As an initial matter, your petition states that *Post Time* should be exempt based on Section 79.1(d)(8), which exempts from the closed captioning rules "locally produced and distributed non-news programming with no repeat value." This exemption applies to "programming that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable" (emphasis added). Video programming distributor is defined in Section 79.1(a)(2) as follows: "Any television broadcast station licensed by the Commission and any multi-channel video programming distributor as defined in Section 76.1000(e) of the rules, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission" (emphasis added). We note that this self-implementing exemption is a narrowly focused exemption.¹ Delaware Standardbred Owners Association does not explain or provide adequate support for its contention that its program falls within the scope of this exemption. Further, we note that Delaware Standardbred Owners Association has not demonstrated that it is a video programming distributor within the meaning of the FCC's Rules.

Regarding the remainder of your petition, if you wish for the petition to receive further consideration for a closed captioning exemption, you must supplement your petition by providing us with the information described below, **by August 17, 2012**. The information we need is:

- Documentation of your financial status sufficient to demonstrate the petitioner's inability to afford closed captioning – for example, profit and loss statements or bank

¹ See, e.g., *New Life Team*, Memorandum Opinion and Order, 20 FCC Rcd 3679, 3680, ¶3 (MB, 2005).

statement information (This should not just include the resources devoted to or the costs associated with the television program at issue.);

- Information about the costs associated with captioning the specific program(s) for which you are requesting an exemption; and,
- Verification that you have sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts have not successfully produced assistance, you do not otherwise have the means to provide captioning for the program(s).

If you do not file this additional information **by August 17, 2012**, or the information that you provide is still not sufficient for us to make a determination, your petition will be dismissed without prejudice to re-filing **on October 16, 2012**, which is 90 days from the date of this letter, and you will be required to begin providing closed captions for your programming **on October 17, 2012**.

Here is additional information that may help you better understand how the FCC processes individual requests for captioning exemptions:

THE PETITION PROCESS – What a Petition Must Contain

The FCC's process for handling closed captioning exemption petitions has multiple steps. CGB is responsible for reviewing and deciding the merits of exemption petitions.

When CGB receives a petition, it must first determine whether a petition contains sufficient information to be placed on public notice (*i.e.*, released to the public) so that the public can comment on its merits. CGB looks to whether the petition contains up-to-date evidence, supported by affidavit, to show that it would be economically burdensome to provide closed captioning for the specific programming for which an exemption is sought. Section 713(e) of the Communications Act and the FCC's rules at 47 C.F.R. § 79.1(f)(2) define "economically burdensome" as "significant difficulty or expense." In determining whether the provision of closed captions will cause significant difficulty or expense, these provisions require the FCC to consider four factors: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.

In order to prove that the provision of closed captioning would impose an economic burden when applying the above four factors, a petition must contain the following:

1. Documentation of the petitioner's financial status sufficient to demonstrate the petitioner's inability to afford closed captioning – for example, profit and loss statements or bank statement information (This should not just include the resources devoted to or the costs associated with the television program at issue.);
2. Information about the costs associated with captioning the specific program(s) for which the petitioner is requesting an exemption;
3. Verification that the petitioner has sought closed captioning assistance (*e.g.*, funding, services) from its video programming distributor, including the extent to which such assistance has been provided or rejected;
4. Verification that the petitioner has sought additional sponsorship sources or other sources of revenue for captioning, and that, even if these efforts have not successfully

- produced assistance, the petitioner does not otherwise have the means to provide captioning for the program(s); and,
5. Information on the type of the petitioner's operation(s) and the impact that providing captions would have on its programming activities, for example, the extent to which its programming might not be shown if it is required to provide captions.

Each petition should contain a list the program(s) for which an exemption is being sought and it may describe other factors that the petitioner deems relevant to an exemption determination, as well as any alternatives that could be a reasonable substitute for the closed captioning requirement. Finally, each petition **must be accompanied by an affidavit** -- a written sworn statement made under oath before an official attesting to the truthfulness and accuracy of the petition -- **or be signed under penalty of perjury**. We note that your petition contained such an affidavit.

We advise petitioners to carefully review the FCC's recently adopted *Memorandum Opinion and Order, Order, and Notice of Proposed Rulemaking in Anglers for Christ Ministries, Inc.*, which can be found at <http://transition.fcc.gov/cgb/dro/caption.html> and corresponding FCC rules (47 CFR § 79.1(f)(2)-(3)). These documents describe the requirements for obtaining an economically burdensome exemption in detail.

THE PETITION PROCESS – What Happens When a Petition is Sufficient or Deficient

If CGB determines that the petition provides *sufficient* information upon which to make a determination of whether or not to grant a closed captioning exemption, it will place the petition on public notice in CG Docket No. 06-181 at <http://fjallfoss.fcc.gov/ecfs/>. Members of the public will then have 30 days to file comments on and/or oppositions to the petition, after which the petitioner will have 20 days to respond. At the end of this timeframe, CGB will review the petition, along with information provided in any comments and responses received, to determine whether providing captioning would be economically burdensome for the petitioner. While a petition is pending, the program at issue does not need to be captioned.

If, however, CGB determines that the petition and supporting documents do not provide sufficient information needed for the FCC to make a determination as to the merits of its petition, the petition will be considered *deficient* and CGB will not place the petition on public notice.

YOUR PETITION

As noted above, CGB has determined that the petition you filed with the FCC on April 5, 2012, provided some information, but it failed to provide sufficient information for us to make a determination as to whether the provision of closed captioning would be economically burdensome for you. Your petition provided verification that you sought closed captioning assistance from your video programming distributor and information on the type of the petitioner's operations and the impact that providing captions would have on its programming activities. We also note that your petition included an affidavit. We conclude, however, that your petition is not sufficient to be placed on public notice. As mentioned above, if you wish to receive further consideration for a closed captioning exemption for your programming, you must supplement your petition by filing the information listed in the third paragraph of this letter **by August 17, 2012**, which is 30 days from the date of this letter. If you do not file this additional information by that date or the information that you provide is still deficient, your petition will be dismissed without prejudice to re-filing **on October 16, 2012**, and you will be required to begin providing closed captions for this programming **on October 17, 2012**.

If you decide to supplement your petition, your petition, as well as any supporting financial information provided, will be available for public inspection. If your petition contains confidential information, you may request “confidential treatment,” *i.e.*, that it not be shared with members of the public, pursuant to FCC rules. *See* 47 C.F.R. § 0.459. If you provide information for which you want “confidential treatment,” you must also submit a second version of your petition with the confidential information redacted (this must be submitted *along with* your request for confidential treatment). The redacted version will be publicly disclosed. If your request for confidential treatment is granted, the “public version” of your petition must still contain sufficient documentation to support your claim that closed captioning would be economically burdensome. This documentation is needed so that the public understands the basis for your exemption request and can comment on its merits.

If you have additional questions pertaining to the filing of an exemption request, please contact the FCC’s Disability Rights Office at captioningexemption@fcc.gov. Thank you.

Roger Holberg
Attorney, Disability Rights Office
Consumer and Governmental Affairs Bureau

Instructions for Filing a Supplement to a Closed Captioning Exemption Petition

You must send the FCC an original and two (2) copies of the information supplementing your previously filed petition for a closed captioning exemption. Filings must be sent by hand or messenger delivery, commercial overnight courier, or by first class or overnight U.S. Postal Service mail.

For U.S. Postal Service mail, including Express Mail, Priority Mail, and First Class Mail, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-B431
445 12th Street, SW
Washington, DC 20554

For commercial overnight mail, such as Federal Express or United Parcel Service, please use the following address:

Office of the Secretary
Federal Communications Commission
Attention: Disability Rights Office, Room 3-B431
9300 East Hampton Drive
Capitol Heights, MD 20743

Electronic filing and faxes of petitions will not be accepted.

Please wait *at least two weeks* before contacting FCC staff to make inquiries about whether your petition has been received. **You must include the case identifier number at the top of the acknowledgement you previously received, which is also at the top of this letter, in all correspondence with the FCC regarding your petition.**